

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

11	TAYVON DOBSON,)	Case No.: 1:22-cv-00987-BAK/SKO (HC)
12	Petitioner,)	
13	v.)	ORDER DIRECTING CLERK OF COURT TO
14	WARDEN B. M. TRATE,)	ASSIGN DISTRICT JUDGE
15	Respondent.)	FINDINGS AND RECOMMENDATIONS TO
16)	DISMISS PETITION FOR WRIT OF HABEAS
17)	CORPUS
)	[21-DAY OBJECTION DEADLINE]

Petitioner is in the custody of the Bureau of Prisons (“BOP”) at the United States Penitentiary in Atwater, California. He filed the instant federal petition on August 8, 2022, challenging his conviction and sentence pursuant to 28 U.S.C. § 2241. Because Petitioner does not satisfy the savings clause in 28 U.S.C. § 2255 which would allow Petitioner to challenge his conviction by way of § 2241, the Court will recommend that the instant petition be DISMISSED.

BACKGROUND

On October 31, 2013, Petitioner pled guilty to attempted murder of federal officers and employees (18 U.S.C. § 1114(3)) and using and carrying a firearm during and in relation to a crime of violence (18 U.S.C. § 924(c)) in the United States District Court for the District of Maryland and was

1 sentenced to a total term of 336 months in prison. See United States v. Dobson, Case No. 1:12-cr-
2 00453-CCB-1 (D. Md.).¹

3 On November 3, 2014, Petitioner filed a motion to vacate, set aside or correct sentence
4 pursuant to 28 U.S.C. § 2255. Id. (ECF 53.) On May 24, Petitioner filed a supplement to the motion
5 to vacate referencing Johnson v. United States, 576 U.S. 591 (2015). Id. (ECF 71.) On April 16,
6 2020, Petitioner filed a Motion to Supplement the Petition in light of United States v. Davis, ___ U.S.
7 ___, 139 S.Ct. 2319 (2019). Id. (ECF 75.) On September 23, 2021, the Maryland District Court
8 ordered the case held in abeyance pending the Supreme Court’s decision in United States v. Taylor,
9 142 S.Ct. 2015 (2022). After the Supreme Court’s decision, the Maryland District Court issued a
10 briefing schedule on July 15, 2022, and the matter is currently awaiting briefing by the parties. The
11 issues presented in that case are the same issues Petitioner now raises here. In fact, Petitioner has
12 resubmitted the same brief in the Maryland District Court case as his petition herein.

13 DISCUSSION

14 A federal prisoner who wishes to challenge the validity or constitutionality of his federal
15 conviction or sentence must do so by way of a motion to vacate, set aside, or correct the sentence
16 under 28 U.S.C. § 2255. Tripati v. Henman, 843 F.2d 1160, 1162 (9th Cir.1988); see also Stephens v.
17 Herrera, 464 F.3d 895, 897 (9th Cir.2006), *cert. denied*, 549 U.S. 1313 (2007). In such cases, only the
18 sentencing court has jurisdiction. Tripati, 843 F.2d at 1163. Generally, a prisoner may not collaterally
19 attack a federal conviction or sentence by way of a petition for a writ of habeas corpus pursuant to 28
20 U.S.C. § 2241. Grady v. United States, 929 F.2d 468, 470 (9th Cir.1991); Tripati, 843 F.2d at 1162;
21 see also United States v. Flores, 616 F.2d 840, 842 (5th Cir.1980). “The general rule is that a motion
22 under 28 U.S.C. § 2255 is the exclusive means by which a federal prisoner may test the legality of his
23 detention, and that restrictions on the availability of a § 2255 motion cannot be avoided through a
24 petition under 28 U.S.C. § 2241.” Stephens, 464 F.3d at 897 (citations omitted).

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26
27 ¹ The Court may take judicial notice of facts that are capable of accurate and ready determination by resort to sources
28 whose accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b); United States v. Bernal-Obeso, 989 F.2d 331, 333
(9th Cir. 1993). Judicial notice may be taken of court records. Valerio v. Boise Cascade Corp., 80 F.R.D. 626, 635 n. 1
(N.D.Cal.1978), *aff’d*, 645 F.2d 699 (9th Cir.).

1 An exception exists by which a federal prisoner may seek relief under § 2241 if he can
 2 demonstrate the remedy available under § 2255 to be "inadequate or ineffective to test the validity of
 3 his detention." United States v. Pirro, 104 F.3d 297, 299 (9th Cir.1997) (quoting 28 U.S.C. § 2255);
 4 see Hernandez, 204 F.3d at 864-65. The Ninth Circuit has recognized that it is a very narrow
 5 exception. Ivy v. Pontesso, 328 F.3d 1057, 1059 (9th Cir.2003). The remedy under § 2255 usually
 6 will not be deemed inadequate or ineffective merely because a prior § 2255 motion was denied, or
 7 because a remedy under that section is procedurally barred. See Aronson v. May, 85 S.Ct. 3, 5 (1964)
 8 (a court's denial of a prior § 2255 motion is insufficient to render § 2255 inadequate.); Tripati, 843
 9 F.2d at 1162-63 (a petitioner's fears of bias or unequal treatment do not render a § 2255 petition
 10 inadequate).

11 The Ninth Circuit has held that Section 2255 provides an 'inadequate and ineffective' remedy
 12 (and thus that the petitioner may proceed under Section 2241) when the petitioner: (1) makes a claim
 13 of actual innocence; and (2) has never had an "unobstructed procedural shot" at presenting the claim.
 14 Stephens, 464 F.3d at 898. The burden is on the petitioner to show that the remedy is inadequate or
 15 ineffective. Redfield v. United States, 315 F.2d 76, 83 (9th Cir.1963).

16 In this case, Petitioner cannot satisfy the savings clause, because Petitioner cannot demonstrate
 17 that he has never had an "unobstructed procedural shot" at presenting his claim. As previously noted,
 18 his claims are in fact in the briefing stage before the sentencing court.

19 Accordingly, the Court concludes that Petitioner has not demonstrated that Section 2255
 20 constitutes an "inadequate or ineffective" remedy for raising his claims. Section 2241 is not the
 21 proper statute for raising Petitioner's claims, and the petition must be dismissed for lack of jurisdiction.

22 ORDER

23 IT IS HEREBY ORDERED that the Clerk of the Court is DIRECTED to assign a United
 24 States District Judge to this case.

25 RECOMMENDATION

26 Based on the foregoing, the Court RECOMMENDS that the Petition for Writ of Habeas
 27 Corpus be DISMISSED for lack of jurisdiction.

1 This Findings and Recommendation is submitted to the United States District Court Judge
2 assigned to the case pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 72-304 of the
3 Local Rules of Practice for the United States District Court, Eastern District of California. Within
4 twenty-one days after being served with a copy of this Findings and Recommendation, any party may
5 file written objections with the Court and serve a copy on all parties. Such a document should be
6 captioned “Objections to Magistrate Judge’s Findings and Recommendation.” Replies to the
7 Objections shall be served and filed within ten court days (plus three days if served by mail) after
8 service of the Objections. The Court will then review the Magistrate Judge’s ruling pursuant to 28
9 U.S.C. § 636 (b)(1)(C). The parties are advised that failure to file objections within the specified time
10 may waive the right to appeal the Order of the District Court. Martinez v. Ylst, 951 F.2d 1153 (9th Cir.
11 1991).

12
13 IT IS SO ORDERED.

14 Dated: August 15, 2022

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE